

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NO. 57 OF 2015

STEPHEN BWOGI BARANDA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the original conviction and sentence of Hon. L. Kaitany – SRM dated 30th June 2015 at the Chief Magistrate’s Court at Kisii in Criminal Case No. 2460 of 2014)

JUDGMENT

1. The appellant, STEPHEN BWOGI BARANDA, was charged and convicted of the offence of defilement contrary to section 8(1) and (2) of the Sexual Offences Act. The particulars were that on 25th August 2014 in Marani District within Kisii County, he intentionally and unlawfully penetrated the vagina of IKM, a child aged six years using his penis. He was sentenced to life imprisonment and he now appeals.
2. Although several grounds of appeal have been raised, I allow this appeal on the basis that the appellant was not given an opportunity to cross examine PW 1 who was the child and a crucial witness. The right to challenge a witness is enshrined in Article 50(2) (k) of the Constitution which speaks of the right to, “adduce and challenge evidence”. It is also buttressed by section 208 of the Criminal Procedure Code (Chapter 75 of the Laws of Kenya). In view of the violation of the appellant’s fundamental right, I quash the conviction and sentence on this ground.
3. In view of the gravity of the offence and the overwhelming evidence against the appellant, I order a retrial. The accused shall remain in custody and shall be taken for fresh plea and retrial before the Chief Magistrate’s Court at Kisii on 21st September 2018.

Dated and delivered at Kisii this 19th day of September, 2018.

D.S MAJANJA

JUDGE

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions.

Mr. Oyugi for the Appellant.